

AMENDED IN SENATE APRIL 30, 2013

AMENDED IN SENATE APRIL 23, 2013

AMENDED IN SENATE APRIL 16, 2013

**SENATE BILL**

**No. 129**

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**Introduced by Senator Wright**  
(Coauthor: Assembly Member Gomez)

January 23, 2013

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*An act to amend Section 53112 of the Government Code, and to amend Section 2881 of, and to repeal Section 278.5 of, the Public Utilities Code, relating to telecommunications, and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

SB 129, as amended, Wright. Deaf and disabled telecommunications program.

(1) Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including telephone corporations. Existing law requires the commission to oversee administration of the state's telecommunications universal service programs, including the deaf and disabled programs, which are funded through the Deaf and Disabled Telecommunications Program Administrative Committee Fund. Existing law, until January 1, 2014, requires the commission to establish a surcharge, not to exceed 0.5%, that is uniformly applied to a subscriber's intrastate telephone service charges to allow providers of the equipment and service provided pursuant to the deaf and disabled programs to recover their costs. Existing law, until January 1, 2016, requires the commission to submit a report on the fiscal status of the programs to the Legislature on or

before December 31 of each year. Existing law requires the report to include, among other things, an evaluation of options for controlling program expenses and program efficiency, as specified.

This bill would extend imposition of the surcharge until January 1, 2020. The bill would extend the reporting requirements until January 1, 2021, and would require the commission to submit the report to the Legislature on or before March 1 of each year. This bill would also require the report to include an evaluation of any modification to the program that would maximize participation and funding opportunities under similar federal programs. As part of the report that is due no later than March 1, 2014, this bill would require the commission to evaluate options for controlling the program costs of providing speech generating devices, and include any information on barriers to participation by eligible subscribers.

(2) Existing law requires the commission to design and implement a program to provide access to a speech-generating telecommunications device to any subscriber who is certified as having a speech disability at no charge additional to the basic exchange rate. Existing law also requires the commission to expand the deaf and disabled program to include assistance to individuals with speech disabilities, including assistance in purchasing speech-generating devices, accessories, and mounting systems, and specialized telecommunications equipment.

This bill would delete the provisions requiring the commission to expand the program to include assistance to individuals with speech disabilities, including assistance in purchasing speech-generating devices, accessories, and mounting systems, and specialized telecommunications equipment.

(3) Existing law states the intent of the Legislature that existing members of the Deaf and Disabled Telecommunications Program Administrative Committee should serve out their current terms of office as members of the committee, but not to exceed July 1, 2003. Existing law requires the committee to develop and submit, not later than October 1, 2002, recommendations to the commission for administration and governance of the deaf and disabled programs, as prescribed.

The bill would repeal these provisions.

(4) Under the Public Utilities Act, a violation of any order, decision, rule, direction, demand, or requirement of the commission by a public utility is a crime.

Because the bill would require an order or decision of the commission to extend the surcharge funding the deaf and disabled programs and

because a violation of these requirements would be a crime, the bill would impose a state-mandated local program by expanding the definition of a crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 53112 of the Government Code is  
2     amended to read:

3     53112. (a) All systems shall be designed to meet the specific  
4     requirements of each community and public agency served by the  
5     system. Every system, whether basic or sophisticated, shall be  
6     designed to have the capability of utilizing at least three of the  
7     methods specified in Sections 53103 to 53106, inclusive, in  
8     response to emergency calls. The Legislature finds and declares  
9     that the most critical aspect of the design of any system is the  
10    procedure established for handling a telephone request for  
11    emergency services.

12    (b) In addition, to maximize efficiency and utilization of the  
13    system, all pay telephones within each system shall, by December  
14    31, 1985, enable a caller to dial "911" for emergency services, and  
15    to reach an operator by dialing "0", without the necessity of  
16    inserting a coin. At those "911" public safety answering points  
17    serving an area where 5 percent or more of the population, in  
18    accordance with the latest United States census information, speak  
19    a specific primary language other than English, operators who  
20    speak each such other language, in addition to English, shall be  
21    on duty or available through interagency telephone conference  
22    procedures at all times for "911" emergency services.

23    (c) In addition, all systems shall require installation of a  
24    telecommunications device capable of servicing the needs of the  
25    deaf or severely hearing impaired at the "911" public safety

1 answering point or points. The device shall be compatible with  
2 devices furnished by telephone corporations pursuant to Section  
3 ~~2834~~ 2881 of the Public Utilities Code.

4 ~~SECTION 4.~~

5 *SEC. 2.* Section 278.5 of the Public Utilities Code is repealed.

6 ~~SEC. 2.~~

7 *SEC. 3.* Section 2881 of the Public Utilities Code is amended  
8 to read:

9 2881. (a) The commission shall design and implement a  
10 program to provide a telecommunications device capable of serving  
11 the needs of individuals who are deaf or hearing impaired, together  
12 with a single party line, at no charge additional to the basic  
13 exchange rate, to a subscriber who is certified as an individual  
14 who is deaf or hearing impaired by a licensed physician and  
15 surgeon, audiologist, or a qualified state or federal agency, as  
16 determined by the commission, and to a subscriber that is an  
17 organization representing individuals who are deaf or hearing  
18 impaired, as determined and specified by the commission pursuant  
19 to subdivision (h). A licensed hearing aid dispenser may certify  
20 the need of an individual to participate in the program if that  
21 individual has been previously fitted with an amplified device by  
22 the dispenser and the dispenser has the individual's hearing records  
23 on file prior to certification. In addition, a physician assistant may  
24 certify the needs of an individual who has been diagnosed by a  
25 physician and surgeon as being deaf or hearing impaired to  
26 participate in the program after reviewing the medical records or  
27 copies of the medical records containing that diagnosis.

28 (b) The commission shall also design and implement a program  
29 to provide a dual-party relay system, using third-party intervention  
30 to connect individuals who are deaf or hearing impaired and offices  
31 of organizations representing individuals who are deaf or hearing  
32 impaired, as determined and specified by the commission pursuant  
33 to subdivision (h), with persons of normal hearing by way of  
34 intercommunications devices for individuals who are deaf or  
35 hearing impaired and the telephone system, making available  
36 reasonable access of all phases of public telephone service to  
37 telephone subscribers who are deaf or hearing impaired. In order  
38 to make a dual-party relay system that will meet the requirements  
39 of individuals who are deaf or hearing impaired available at a  
40 reasonable cost, the commission shall initiate an investigation,

1 conduct public hearings to determine the most cost-effective  
2 method of providing dual-party relay service to the deaf or hearing  
3 impaired when using a telecommunications device, and solicit the  
4 advice, counsel, and physical assistance of statewide nonprofit  
5 consumer organizations of the deaf, during the development and  
6 implementation of the system. The commission shall apply for  
7 certification of this program under rules adopted by the Federal  
8 Communications Commission pursuant to Section 401 of the  
9 federal Americans with Disabilities Act of 1990 (Public Law  
10 101-336).

11 (c) The commission shall also design and implement a program  
12 whereby specialized or supplemental telephone communications  
13 equipment may be provided to subscribers who are certified to be  
14 disabled at no charge additional to the basic exchange rate. The  
15 certification, including a statement of visual or medical need for  
16 specialized telecommunications equipment, shall be provided by  
17 a licensed optometrist, physician and surgeon, or physician  
18 assistant, acting within the scope of practice of his or her license,  
19 or by a qualified state or federal agency as determined by the  
20 commission. The commission shall, in this connection, study the  
21 feasibility of, and implement, if determined to be feasible, personal  
22 income criteria, in addition to the certification of disability, for  
23 determining a subscriber's eligibility under this subdivision.

24 (d) (1) The commission shall also design and implement a  
25 program to provide access to a speech-generating device to any  
26 subscriber who is certified as having a speech disability at no  
27 charge additional to the basic exchange rate. The certification shall  
28 be provided by a licensed physician, licensed speech-language  
29 pathologist, or qualified state or federal agency. The commission  
30 shall provide to a certified subscriber access to a speech-generating  
31 device that is all of the following:

32 (A) A telecommunications device or a device that includes a  
33 telecommunications component.

34 (B) Appropriate to meet the subscriber's needs for access to,  
35 and use of, the telephone network, based on the recommendation  
36 of a licensed speech-language pathologist.

37 (C) Consistent with the quality of speech-generating devices  
38 available for purchase in the state.

39 (2) The commission shall adopt rules to implement this  
40 subdivision and subdivision (e) by January 1, 2014.

(e) All of the following apply to any device or equipment described in this section that is classified as durable medical equipment under guidelines established by the United States Department of Health and Human Services:

(1) It is the intent of the Legislature that the commission be the provider of last resort and that eligible subscribers first obtain coverage from any available public or private insurance.

(2) The commission may require the subscriber to provide information about coverage for any or all of the cost of the device or equipment that is available from any public or private insurance, the cost to the subscriber of any deductible, copayment, or other relevant expense, and any related benefit cap information.

(3) The total cost of any device or equipment provided to a subscriber under this section shall not exceed the rate of reimbursement provided by Medi-Cal for that device or equipment.

(f) Nothing in this section requires the commission to provide training to a subscriber on the use of a speech-generating device.

(g) The commission shall establish a rate recovery mechanism through a surcharge not to exceed one-half of 1 percent uniformly applied to a subscriber's intrastate telephone service, other than one-way radio paging service and universal telephone service, both within a service area and between service areas, to allow providers of the equipment and service specified in subdivisions (a), (b), ~~and (c)~~, and (d) to recover costs as they are incurred under this section. The surcharge shall be in effect until January 1, 2020. The commission shall require that the programs implemented under this section be identified on subscribers' bills, and shall establish a fund and require separate accounting for each of the programs implemented under this section.

(h) The commission shall determine and specify those statewide organizations representing the deaf or hearing impaired that shall receive a telecommunications device pursuant to subdivision (a) or a dual-party relay system pursuant to subdivision (b), or both, and in which offices the equipment shall be installed in the case of an organization having more than one office.

(i) The commission may direct a telephone corporation subject to its jurisdiction to comply with its determinations and specifications pursuant to this section.

(j) The commission shall annually review the surcharge level and the balances in the funds established pursuant to subdivision

1 (g). Until January 1, 2020, the commission may make, within the  
2 limits set by subdivision (g), any necessary adjustments to the  
3 surcharge to ensure that the programs supported thereby are  
4 adequately funded and that the fund balances are not excessive. A  
5 fund balance that is projected to exceed six months' worth of  
6 projected expenses at the end of the fiscal year is excessive.

7 (k) The commission shall prepare and submit to the Legislature,  
8 on or before March 1 of each year, a report on the fiscal status of  
9 the programs established and funded pursuant to this section and  
10 Sections 2881.1 and 2881.2. The report shall include a statement  
11 of the surcharge level established pursuant to subdivision (g) and  
12 revenues produced by the surcharge, an accounting of program  
13 expenses, and an evaluation of options for controlling those  
14 expenses and increasing program efficiency, including, but not  
15 limited to, all of the following proposals:

16 (1) The establishment of a means test for persons to qualify for  
17 program equipment or free or reduced charges for the use of  
18 telecommunication services.

19 (2) If and to the extent not prohibited under Section 401 of the  
20 federal Americans with Disabilities Act of 1990 (Public Law  
21 101-336), the imposition of limits or other restrictions on maximum  
22 usage levels for the relay service, which shall include the  
23 development of a program to provide basic communications  
24 requirements to all relay users at discounted rates, including  
25 discounted toll-call rates, and, for usage in excess of those basic  
26 requirements, at rates that recover the full costs of service.

27 (3) More efficient means for obtaining and distributing  
28 equipment to qualified subscribers.

29 (4) The establishment of quality standards for increasing the  
30 efficiency of the relay system.

31 (5) Any modification to the program in order to maximize  
32 participation and funding opportunity under similar federal  
33 programs.

34 (l) The report described in subdivision (k) that is due no later  
35 than March 1, 2014, shall evaluate options for controlling the  
36 program costs of providing speech-generating devices and include  
37 information on any barriers to participation in the program by  
38 eligible subscribers.

39 (m) In order to continue to meet the access needs of individuals  
40 with functional limitations of hearing, vision, movement,

1 manipulation, speech, and interpretation of information, the  
2 commission shall perform ongoing assessment of, and if  
3 appropriate, expand the scope of the program to allow for  
4 additional access capability consistent with evolving  
5 telecommunications technology.

6 (n) The commission shall structure the programs required by  
7 this section so that a charge imposed to promote the goals of  
8 universal service reasonably equals the value of the benefits of  
9 universal service to contributing entities and their subscribers.

10 (o) (1) The requirement for submitting a report imposed under  
11 subdivision (k) is inoperative on January 1, 2021, pursuant to  
12 Section 10231.5 of the Government Code.

13 (2) A report submitted pursuant to subdivision (k) shall be  
14 submitted in compliance with Section 9795 of the Government  
15 Code.

16 ~~SEC. 3.~~

17 *SEC. 4.* No reimbursement is required by this act pursuant to  
18 Section 6 of Article XIII B of the California Constitution because  
19 the only costs that may be incurred by a local agency or school  
20 district will be incurred because this act creates a new crime or  
21 infraction, eliminates a crime or infraction, or changes the penalty  
22 for a crime or infraction, within the meaning of Section 17556 of  
23 the Government Code, or changes the definition of a crime within  
24 the meaning of Section 6 of Article XIII B of the California  
25 Constitution.

26 ~~SEC. 4.~~

27 *SEC. 5.* This act is an urgency statute necessary for the  
28 immediate preservation of the public peace, health, or safety within  
29 the meaning of Article IV of the Constitution and shall go into  
30 immediate effect. The facts constituting the necessity are:

31 In order to avoid administrative and reporting disruptions with  
32 respect to the state's deaf and disabled telecommunications  
33 universal service programs, to maintain compliance with federal  
34 telecommunications universal service program requirements, and  
35 to encourage continued investments in the development and  
36 manufacture of technology and software that advances the  
37 communications capabilities of the deaf and disabled, it is  
38 necessary for this act to take effect immediately.

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